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February 3, 2015

OVERNIGHT MAIL AND E-MAIL

Honorable Erin M. Wirth
Administrative Law Judge
Federal Maritime Commission
800 North Capital Street, N. W.
Washington, D.C. 20573-0001

Re: Docket No. 14-10 - Econocaribe Consolidators, Inc. vs. Amoy International, L. L. C.
Request to File a Supplemental Response 46 C.F.R. § 502.70 (d)

Dear Judge Wirth:

Respondent Amoy International, LLC ("Amoy") respectfully requests that it be allowed to submit a Supplemental Response in light of a plethora of new grounds, allegations and exhibits that were submitted by Petitioner Econocaribe Consolidators, Inc. (Econocaribe") in its reply. Amoy believes that extraordinary circumstances are present to warrant additional briefing by Amoy under 46 C.F.R. § 502.70 (d), as follows:

1. **Econocaribe's Reply contains allegations, purported "undisputed facts," and exhibits presented for the first time. Good cause exists to allow Amoy the opportunity to dispute those new allegations.**

Econocaribe ignored the rules of this Court and submitted a Reply that is, in essence, a new motion due to the substantial addition of new grounds, new purported "undisputed facts," and new proffered evidence. 46 C.F.R. §502.70 (c) succinctly mandates that "[A] reply may not raise new grounds for relief or present matters that do not relate to the response." Notwithstanding this rule, Econocaribe's Reply includes "Complainant's New Statement of Undisputed Facts," which not only contains seven new purportedly undisputed facts, it also rewrites its previously-submitted Statement of Undisputed Facts. See ¶11 of Econocaribe's "New Statement of Undisputed Facts," in which Econocaribe states "Econocaribe agrees *to rewrite this statement* to read . . ." Econocaribe's "agreement" is irrelevant. No such agreement was requested or given by Amoy. Nor is an agreement to rewrite the Statement of Undisputed Fact by Reply permitted under the code.

In addition to presenting new grounds for its motion, Econocaribe's Reply presented matters consisting of 7 new exhibits with an excess of 100 pages of documents. This is a further violation of 46 C.F.R. §502.70 (c). Econocaribe's violations of 46 C.F.R. §502.70(c) are not merely procedural. Rather, Econocaribe's Reply is an attempt to deprive Amoy of the opportunity to refute baseless and conclusory allegations.

2. **Econocaribe is mistaken in several of its representations to the Commission and Amoy seeks the opportunity to clarify the record.**

In addition to the new grounds and new matters presented in Econocaribe's Reply, the Reply makes representations that are unsupported and inaccurate. For example, it asserts over and over again in its Reply that Melissa Chen's declaration, submitted in opposition to Econocaribe's motion, was unsigned and therefore should be stricken. Econocaribe is mistaken in this representation. Amoy submitted a declaration, signed under oath, to the FMC and to opposing counsel Mr. Mooney.

As another example, Econocaribe submitted, without any authentication whatsoever, a purported printout from the internet and then uses that printout in making the absurd assertion, presented as "undisputed fact," that Amoy is a "used tire seller." This is a fundamental misrepresentation for which Amoy seeks to refute. Another example is Econocaribe's new Undisputed Fact no. 33 in which Econocaribe "suggests" a reading of a legal document that contains no language supporting Econocaribe purported fact.

This unacceptable pleading utilized by Econocaribe is prohibited by the Code of Federal Regulations and has deprived Amoy of meaningfully opposing Econocaribe's motion for partial summary judgment. In view of the foregoing, Amoy believes that extraordinary circumstances exist under 46 C.F.R. 502.70 (d) for this Court to grant leave to Amoy to submit a Supplemental Response.

Respectfully submitted,

RUSSELL, MIRKOVICH & MORROW



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Copy: Office of the Secretary (via email)
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